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HIGHPOINTE VILLAGE, L.P.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

National Fair Housing Alliance, Inc.; Fair
Housing of Marin, Inc.; Fair Housing Napa
Valley, Inc.; Metro Fair Housing Services,
Inc.; and Fair Housing Continuum, Inc.,

Plaintiffs,

vs.

A.G. Spanos Construction, Inc.; A.G.
Spanos Development, Inc.; A.G. Spanos
Land Company, Inc.; A.G. Spanos
Management, Inc.; The Spanos
Corporation; and

Knickerbocker Properties, Inc. XXXVIII;;
and Highpointe Village, L.P., Individually
and as Representatives of a Class of All
Others Similarly Situated,

Defendants.

Case No. C07-03255-SBA

**AMENDED [PROPOSED] ORDER
GRANTING DEFENDANT HIGHPOINTE
VILLAGE, L.P.'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Date: March 11, 2008
Time: 1:00 p.m.
Ctrm: 3

1 The motion of Defendant Highpointe Village, L.P. (“Highpointe Village”) for an order
 2 dismissing the claims of Plaintiffs National Fair Housing Alliance, Inc., Fair Housing of Marin,
 3 Inc., Fair Housing Napa Valley, Inc., Metro Fair Housing Services, Inc., and Fair Housing
 4 Continuum, Inc. (collectively, “Plaintiffs”) against Highpointe Village came on regularly for
 5 hearing on March 11, 2008, at 1:00 p.m., in Courtroom 3, of the above-entitled court located at
 6 1301 Clay Street, 3rd Floor, Oakland, California, before the Honorable Sandra Brown
 7 Armstong. Shirley E. Jackson, Esq., of Manatt, Phelps and Phillips, LLP, appeared on behalf of
 8 Highpointe Village. D. Scott Chang, Esq. of Relman & Dane, PLLC, appeared on behalf of
 9 Plaintiffs.

10 I. BACKGROUND

11 Plaintiffs’ First Amended Complaint, filed on October 12, 2007, alleges that 81 apartment
 12 complexes located in various states and built by Defendants A.G. Spanos Construction, Inc., A.G.
 13 Spanos Development, Inc., A.G. Spanos Land Company, Inc., A.G. Spanos Management, Inc.,
 14 and the Spanos Corporation (collectively, the “Spanos Defendants”) fail to comply with the Fair
 15 Housing Act (42 U.S.C. § 3601, *et seq.*) (the “FHA”). Thirty-four of these apartment complexes
 16 are alleged to have been “tested” and fail to meet the accessibility requirements of the FHA. The
 17 remaining 47 apartment complexes are “untested” by Plaintiffs, but also allegedly fail to meet the
 18 accessibility requirements of the FHA.

19 Plaintiffs therefore seek a court order declaring that the Spanos Defendants’ alleged
 20 discriminatory housing practices and conduct violate the FHA, and an award of monetary
 21 damages against the Spanos Defendants. They also seek to enjoin the Spanos Defendants from,
 22 among other things, failing or refusing to retrofit the apartment complexes to bring them into
 23 compliance with the FHA and applicable regulations. In addition to an injunction against the
 24 Spanos Defendants, Plaintiffs seek to enjoin the various current owners of the apartment
 25 complexes, including Highpointe Village, from failing or refusing to permit the Spanos
 26 Defendants to perform the retrofits.

27 Highpointe Village filed its motion to dismiss Plaintiffs’ First Amended Complaint on
 28 December 12, 2007, and re-noticed such motion on January 9, 2008. Plaintiffs filed their

1 Opposition Brief on February 19, 2008. Highpointe Village filed its Reply Brief on February 26,
2 2008.

3 II. LEGAL STANDARD

4 A complaint is subject to dismissal under Federal Rule of Civil Procedure 12(b)(6) (“Rule
5 12(b)(6)”) when the plaintiff has failed to state a claim upon which relief may be granted. A
6 plaintiff fails to state a claim when either (1) there is no cognizable legal theory upon which relief
7 may be granted, or (2) there is an absence of sufficient facts alleged to support a cognizable legal
8 theory. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A complaint fails to state a claim
9 when, for instance, the running of the statute of limitations appears on the face of the complaint.
10 *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980)

11 In ruling on a motion to dismiss under Rule 12(b)(6), all allegations of material fact are
12 taken by the Court as true and construed in the light most favorable to the nonmoving party. The
13 Court need not, however, accept as true allegations that contradict matters properly subject to
14 judicial notice or allegations that are merely conclusory, unwarranted deductions of fact, or
15 unreasonable inferences. *See, e.g., Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th
16 Cir. 2001); *In re Stac Elecs. Sec. Lit.*, 89 F.3d 1399, 1403 (9th Cir. 1996).

17 III. ANALYSIS

18 The First Amended Complaint fails to state a claim for relief against Highpointe Village
19 because Plaintiffs’ claims are barred by the applicable two year statute of limitations. 42 U.S.C. §
20 3613(a)(1)(A). Plaintiffs’ claims began to run upon at the completion of construction of the
21 apartment complex owned by Highpointe Village. *See, e.g., Moseke v. Miller & Smith*, 202
22 F.Supp.2d 492, 507 (E.D. Va. 2002); *United States v. Taigen & Sons*, 303 F.Supp.2d 1129, 1144
23 (D. Idaho 2003). The First Amended Complaint alleges that construction of Highpointe Village’s
24 apartment complex was “completed in 2003”—more than two years ago. *See* First Amended
25 Complaint, ¶ 62 (p. 27:2). The continuing violation doctrine has no application to Highpointe
26 Village, as Plaintiffs’ First Amended Complaint does not allege that Highpointe Village has done
27 or performed any discriminatory act, let alone a discriminatory act within the two years preceding
28

1 the filing of such complaint. *See, e.g., Silver State Fair Housing Council, Inc. v. ERGS, Inc.*, 362
2 F. Supp. 2d 1218 (Dist. Nev. 2005).

3 In addition to Plaintiffs' claims against Highpointe Village being time-barred, Plaintiffs
4 fail to allege facts sufficient to establish organizational standing under Article III of the Federal
5 Constitution. An organization "may satisfy the Article III requirement of injury in fact if it can
6 demonstrate (1) frustration of its organizational mission; and (2) diversion of its resources to
7 combat the particular housing discrimination in question." *Smith v. Disabled Rights Action*
8 *Committee*, 358 F.3d 1097, 1105 (9th Cir. 2004) (citing *Fair Housing of Marin v. Combs*, 285
9 F.3d 899, 905 (9th Cir. 2002)). To satisfy the "diversion of resources" requirement, an allegation
10 of litigation expense alone is generally insufficient. *Id.* Rather, the plaintiff must "point[] to a
11 concrete and demonstrable injury to its activities, not simply a setback to the organization's
12 abstract social interests." *Project Sentinel v. Evergreen Ridge Apartments*, 40 F.Supp.2d 1136
13 (N.D. Cal. 1990). "In other words, an organization establishes an Article III injury if it alleges
14 that unlawful action has increased the resources the group must devote to programs independent
15 of its suit challenging the unlawful action." *Id.* Here, Plaintiffs do not allege that Highpointe
16 Village's conduct directly obstructed their services; rather, the sole injuries alleged are to
17 Plaintiffs' abstract goals and the cost of initiating this suit. Further, this suit is not alleged to have
18 been made necessary by any detrimental impact of Highpointe Village's actions on Plaintiffs'
19 operations. In other words, Plaintiffs fail to allege any injury to themselves "independent to
20 [their] decision to divert resources away from the pursuit of its abstract goals to support this suit."
21 *Id.* at 1140.

22 Finally, Plaintiffs failed to allege any facts that they may properly seek to enjoin
23 Highpointe Village from refusing to allow retrofits to its apartment complex. Plaintiffs seek
24 injunctive relief against Highpointe Village not based on any alleged wrongful conduct by
25 Highpointe Village but, rather, based on the Spanos' Defendants alleged violations of the design
26 and construct provisions of the FHA. Plaintiffs neither have standing nor do they otherwise
27 allege the threshold requirements for obtaining an injunction, *i.e.*, irreparable harm and
28 inadequacy of legal remedies. *See, e.g., Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 57-67

(1975); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-507 (1959); *Molski v. Mandarin Touch Restaurant*, 385 F.Supp.2d 1042, 1045 (C.D. 2005); *Oak Ridge Care Ctr., Inc. v. Racine County*, 896 F.Supp. 867 (C.D. Wis. 1995);.

IV. CONCLUSION

After reviewing and considering the papers submitted in support of and in opposition to Highpointe Village's motion, the files and records in this matter, and having heard and considered oral argument of counsel, and good cause appears therefore,

IT IS ORDERED that Highpointe Village's motion to dismiss Plaintiffs' First Amended Complaint is GRANTED pursuant to Federal Rule of Civil Procedure 12(b)(6). The First Amended Complaint is dismissed with prejudice as to Highpointe Village on the ground that Plaintiffs' claims against Highpointe Village fail to state a claim upon which relief may be granted.

IT IS SO ORDERED.

Dated: _____, 2008

Honorable Sandra Brown Armstrong
United States District Judge

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